

HOUSE BILL No. 1630

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-8-10; IC 12-15-15-4.5; IC 16-18-2-290.5; IC 16-18-2-337.8; IC 16-41-6; IC 27-8-24-4.

Synopsis: HIV testing of pregnant women. Requires that a pregnant woman be tested for HIV during pregnancy or at the time of delivery unless she refuses. Requires that a pregnant woman's refusal to consent to the test be documented in the woman's medical records. Requires a pregnant woman who refuses to consent to the test to acknowledge that she: (1) received the required counseling and information; and (2) refuses to consent to the test. Specifies certain information regarding HIV testing, transmission, prevention, and treatment that must be provided to a pregnant woman. Requires that information regarding the HIV testing status of a pregnant woman be included on the confidential part of the birth or stillbirth certificate. Makes the results of the tests confidential. Requires the state department of health to distribute written materials explaining treatment options for individuals who have a positive HIV test. Repeals a provision concerning voluntary HIV testing for pregnant women and a provision containing an obsolete definition.

Effective: Upon passage; July 1, 2003.

Welch, Crawford

January 16, 2003, read first time and referred to Committee on Human Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1630

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-8-10, AS ADDED BY P.L.91-1999,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 10. (a) The state shall cover the **testing required**
4 **under IC 16-41-6-4 and the** examinations required under
5 IC 16-41-17-2 under a:

- 6 (1) self-insurance program established or maintained under
7 section 7(b) of this chapter to provide group health coverage; and
8 (2) contract entered into or renewed under section 7(c) of this
9 chapter to provide health services through a prepaid health care
10 delivery plan.

11 **(b) Payment to a hospital for a test required under**
12 **IC 12-15-15-4.5 must be in an amount equal to the hospital's actual**
13 **cost of performing the test.**

14 SECTION 2. IC 12-15-15-4.5 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. Payment to a hospital for a**
17 **test required under IC 16-41-6-4 must be in an amount equal to the**



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1 hospital's actual cost of performing the test. The total cost to the
 2 state may not be more than twenty-four thousand dollars
 3 (\$24,000).

4 SECTION 3. IC 16-18-2-337.8 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2003]: **Sec. 337.8. "Standard serological test
 7 for HIV", for purposes of IC 16-41-6, has the meaning set forth in
 8 IC 16-41-6-0.5.**

9 SECTION 4. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2003]: **Sec. 0.5. As used in this chapter, "standard serological test
 12 for HIV" means a test recognized by the state department as a
 13 standard serological test for the antibody or antigen to HIV.**

14 SECTION 5. IC 16-41-6-1, AS AMENDED BY P.L.293-2001,
 15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2003]: Sec. 1. (a) Except as provided in subsection (b), a
 17 person may not perform a screening or confirmatory test for the
 18 antibody or antigen to ~~the human immunodeficiency virus (HIV)~~ **HIV**
 19 without the consent of the individual to be tested or a representative as
 20 authorized under IC 16-36-1. A physician ordering the test or the
 21 physician's authorized representative shall document whether or not the
 22 individual has consented. **The test for the antibody or antigen to
 23 HIV may not be performed on a woman described in section 5, 6,
 24 or 7 of this chapter if the woman refuses under section 8 of this
 25 chapter to consent to the test.**

26 (b) The test for the antibody or antigen to HIV may be performed if
 27 one (1) of the following conditions exists:

28 (1) If ordered by a physician who has obtained a health care
 29 consent under IC 16-36-1 or an implied consent under emergency
 30 circumstances and the test is medically necessary to diagnose or
 31 treat the patient's condition.

32 (2) Under a court order based on clear and convincing evidence
 33 of a serious and present health threat to others posed by an
 34 individual. A hearing held under this subsection shall be held in
 35 camera at the request of the individual.

36 (3) If the test is done on blood collected or tested anonymously as
 37 part of an epidemiologic survey under IC 16-41-2-3 or
 38 IC 16-41-17-10(a)(5).

39 (4) The test is ordered under section 4 of this chapter.

40 (5) The test is required or authorized under IC 11-10-3-2.5.

41 (c) A court may order a person to undergo testing for HIV under
 42 IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

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SECTION 6. IC 16-41-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Subject to subsection ~~(e)~~, **(f)**, if:

(1) the mother of a newborn infant has not had a test performed under ~~IC 16-41-6-2.5~~ **section 5, 6, or 7 of this chapter;**

(2) the mother of a newborn infant has refused a test for the newborn infant to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV; and

(3) a physician believes that testing the newborn infant is medically necessary;

the physician **overseeing the care of the newborn infant** may order a confidential test for the newborn infant in order to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and

(2) provide ~~human immunodeficiency virus~~ HIV information and counseling to the mother. The information and counseling must include the following:

(A) The purpose of the test.

(B) The risks and benefits of the test.

(C) A description of the methods of HIV transmission.

(D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.

(E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) If a test ordered under subsection (a) is positive, the physician who ordered the test shall inform the mother of the newborn infant of:

(1) all treatment options available to the newborn infant; and

(2) the prognostic implications of the disease.

(f) If the a parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

~~(f)~~ (g) The state department shall adopt rules under IC 4-22-2 to



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1 carry out this section.

2 **(h) The results of a test performed under this section are**
 3 **confidential.**

4 SECTION 7. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2003]: **Sec. 5. (a) This section applies to:**

7 **(1) a physician licensed under IC 25-22.5; or**

8 **(2) an advanced practice nurse licensed under IC 25-23;**
 9 **who provides prenatal care within the scope of the provider's**
 10 **license.**

11 **(b) Subject to section 9 of this chapter, an individual described**
 12 **in subsection (a) who:**

13 **(1) diagnoses the pregnancy of a woman; or**

14 **(2) is primarily responsible for providing prenatal care to a**
 15 **pregnant woman;**

16 **shall order to be taken a sample of the pregnant woman's blood**
 17 **and shall submit the sample to an approved laboratory for a**
 18 **standard serological test for HIV.**

19 SECTION 8. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2003]: **Sec. 6. (a) Subject to sections 8 and 9 of this chapter, an**
 22 **individual other than a physician who is permitted by law to attend**
 23 **a pregnant woman but who is not permitted by law to take blood**
 24 **specimens shall request that a licensed physician order to be taken**
 25 **a sample of the pregnant woman's blood.**

26 **(b) A licensed physician who orders a blood sample under**
 27 **subsection (a) shall submit the sample to an approved laboratory**
 28 **for a standard serological test for HIV.**

29 SECTION 9. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2003]: **Sec. 7. Subject to section 9 of this chapter, if, at the time**
 32 **of delivery, there is no written evidence that a standard serological**
 33 **test for HIV has been performed under section 5 or 6 of this**
 34 **chapter, the individual in attendance at the delivery shall order to**
 35 **be taken a sample of the woman's blood at the time of the delivery**
 36 **and shall submit the sample to an approved laboratory for a**
 37 **standard serological test for HIV.**

38 SECTION 10. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2003]: **Sec. 8. A pregnant woman has a right to refuse a test**
 41 **under section 5, 6, or 7 of this chapter.**

42 SECTION 11. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. (a) This section applies to:**

(1) a physician or an advanced practice nurse who orders an HIV test under section 5 of this chapter or to the physician's or nurse's designee;

(2) an individual other than a physician permitted by law to attend a pregnant woman who requests that a licensed physician order to be taken a sample of a pregnant woman's blood for an HIV test under section 6 of this chapter; and

(3) an individual who, in attendance at the delivery of a child, orders an HIV test under section 7 of this chapter.

(b) An individual described in subsection (a) shall inform the pregnant woman that:

(1) the individual is required by law to:

(A) if the individual is an individual described in subsection (a)(1) or (a)(3), order an HIV test; or

(B) if the individual is an individual described in subsection (a)(2), request that a licensed physician order an HIV test;

unless the pregnant woman refuses; and

(2) the pregnant woman has a right to refuse the test.

(c) An individual described in subsection (a) shall:

(1) provide the pregnant woman with a description of the methods of HIV transmission;

(2) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk;

(3) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services; and

(4) explain to the pregnant woman:

(A) the purpose of the test; and

(B) the risks and benefits of the test.

(d) An individual described in subsection (a) shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsections (b) and (c).

(e) If a pregnant woman refuses to consent to an HIV test, the refusal must be noted in the pregnant woman's medical records.

(f) If a test ordered under section 5, 6, or 7 of this chapter is positive:

(1) an individual described in subsection (a) shall inform the pregnant woman of all treatment options available to the

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pregnant woman; and

(2) an individual described in subsection (a)(1) shall inform the pregnant woman of the prognostic implications of the disease.

(g) The provisions of IC 16-41-2-3 apply to a positive HIV test under section 5, 6, or 7 of this chapter.

(h) The results of a test performed under section 5, 6, or 7 are confidential.

(i) As a routine component of prenatal care, every individual described in subsection (a) is required to provide information and counseling regarding HIV and the standard serological test for HIV, and to offer and recommend the standard serological test for HIV.

(j) The individual described in subsection (a) shall obtain a statement, signed by the pregnant woman, acknowledging that she was counseled and provided the required information set forth in subsection (c) to ensure that an informed decision has been made.

(k) A pregnant woman who refuses a test under this section must do so in writing.

SECTION 12. IC 16-41-6-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 10.** The state department shall require, on the confidential part of each birth certificate and stillbirth certificate retained by the state department, in addition to the information otherwise required to be included on the certificate, the following information:

(1) Whether a standard serological test for HIV was performed on the woman who bore the child.

(2) If a standard serological test for HIV was performed:

(A) the date the blood specimen was taken; and

(B) whether the test was performed during pregnancy or at the time of delivery.

(3) If a standard serological test for HIV was not performed, the reason the test was not performed.

SECTION 13. IC 16-41-6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11.** The state department shall distribute to physicians and to other individuals who are allowed by law to attend a pregnant woman information available from the federal Centers for Disease Control and Prevention that explains the treatment options available to an individual who has a positive test for HIV.

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SECTION 14. IC 16-41-6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 12. The state department shall adopt rules under IC 4-22-2 to establish standards to be used by individuals described in section 9(a) of this chapter to provide to women who are pregnant, before delivery, at delivery, and after delivery information concerning HIV. The rules must include:**

- (1) an explanation of the nature of AIDS and HIV;**
- (2) information concerning discrimination and legal protections;**
- (3) information concerning the duty to notify persons at risk as described in IC 16-41-7-1;**
- (4) information about risk behaviors for HIV transmission;**
- (5) information about the risk of transmission through breast feeding;**
- (6) notification that if the woman chooses not to be tested for HIV before delivery, at delivery the child will be tested subject to section 4 of this chapter;**
- (7) procedures for obtaining informed, written consent for testing under this chapter;**
- (8) procedures to inform the woman of the test results whether they are positive or negative;**
- (9) procedures for post-test counseling by a health care provider when the test results are communicated to the woman, whether the results are positive or negative;**
- (10) procedures for referral for physical and emotional services if the test results are positive;**
- (11) procedures for explaining the importance of immediate entry into medical care if the test results are positive;**
- (12) procedures for explaining the side effects of any treatment if the test results are positive;**
- (13) procedures for explaining that giving birth by cesarean section may lessen the likelihood of passing on the HIV virus to the child during childbirth, especially when done in combination with medications if the test results are positive; and**
- (14) procedures that provide that if the mother refused testing for the newborn and the newborn was tested with positive results, the mother must be notified of the positive test within forty-eight (48) hours after the test.**

SECTION 15. IC 16-41-6-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2003]: **Sec. 13. (a)** The state department shall provide that an HIV test history and assessment form from the patient's medical records or an interview with the patient must be filled out. The state department shall develop the form to determine if:

- (1) the patient is HIV positive and has been informed; or
- (2) the patient was tested during the current pregnancy and tested negative or was not tested during the current pregnancy and the HIV status is unknown.

(b) The form required under subsection (a) must identify what special support or assistance for continued medical care the patient might need as a result of a positive test.

(c) The form must be in triplicate, with one (1) copy going into the patient's medical file, one (1) copy going into the baby's medical file, and one (1) copy going to the doctor in the hospital designated to administer the newborn HIV testing program.

(d) The state department must maintain a systemwide evaluation of prenatal HIV testing in Indiana. The state department shall prescribe the HIV test history and assessment form and a newborn blood screening form. The state department shall remove all identifying information from the maternal test history before the state department performs its analyses and not maintain HIV test history data with identifying information.

SECTION 16. IC 16-41-6-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE UPON PASSAGE]: **Sec. 14. (a)** Women who:

- (1) meet the financial qualifications to participate in Medicaid, the children's health insurance program, the AIDS drug assistance program, the health insurance assistance program, or any other health care program of the state; and
- (2) test positive under section 5, 6, or 7 of this chapter;

shall be automatically approved and accepted into the Medicaid program, the children's health insurance program, the AIDS drug assistance program (ADAP), the health insurance assistance program, or any other health care program of the state.

(b) Women who qualify under this section may not be placed on a waiting list for services, and they remain eligible until they either cease to meet the financial qualifications under subsection (a) or no longer test positive for HIV.

(c) An individual described in section 9(a) of this chapter who can no longer provide care for a woman described in subsection (a) must continue to provide care for the woman until another

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provider is found to continue care for the woman.

(d) Before October 1, 2003, the office of Medicaid policy and planning shall apply to the United States Department of Health and Human Services for approval of any necessary waivers under the federal Medicaid program and the children's health insurance program to provide for expanded eligibility for women under this chapter.

(e) The office of Medicaid policy and planning may not implement a waiver described in subsection (d) until the office files an affidavit with the governor attesting that the federal waiver applied for under this section is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(f) If the office receives a waiver under this section from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (e), the office of Medicaid policy and planning shall implement the waiver not later than sixty (60) days after the governor receives the affidavit.

SECTION 17. IC 27-8-24-4, AS AMENDED BY P.L.91-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as provided in section 5 of this chapter, every policy or group contract that provides maternity benefits must provide minimum benefits to a mother and her newborn child that cover:

(1) a minimum length of postpartum stay at a hospital licensed under IC 16-21 that is consistent with the minimum postpartum hospital stay recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists in their Guidelines for Perinatal Care; and

(2) the examinations to the newborn child required under IC 16-41-17-2; and

(3) the testing of the newborn child required under IC 16-41-6-4.

(b) Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test.

SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 16-18-2-290.5; IC 16-41-6-2.5.

SECTION 19. An emergency is declared for this act.

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